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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,840	01/30/2004	Stephen W. Foss	6080 P39 DIV6	7112
26486	7590 10/04/2004		EXAM	INER
PERKINS, SMITH & COHEN LLP ONE BEACON STREET			DIXON, MERRICK L	ERRICK L
30TH FLOO			ART UNIT	PAPER NUMBER
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DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Applicant(s)   FOSS, STEPHEN W.				th /			
Examiner			Application No.	Applicant(s)			
Metrick Dixon   1774			10/768,840	FOSS, STEPHEN W.			
The MALLING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE   MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Editations of time may be available under the provision of 37 CPR 1.13(s). In no event, however, may a reply be timely filled after SIX (s) MONTHS from the mailing date of this communication of 37 CPR 1.13(s). In no event, however, may a reply be timely filled after SIX (s) MONTHS from the mailing date of this communication.  If NO period to reply is specified above, the maximum stabulary prioried highly and will eleps (s) MONTHS (s) MONTHS from the mailing date of this communication.  Failure to reply within the set or extended preprior the stable priories will apply and will eleps (s) MONTHS (s) MONTHS from the mailing date of this communication.  Failure to reply within the set of calended preprior the stable priories will apply and will eleps (s) MONTHS from the mailing date of this communication.  Failure to reply within the set of calended preprior the stable priories will apply and will eleps (s) MONTHS from the mailing date of this communication.  Failure to reply within the set of calended preprior the stable priories will be set on the set of calended prepriories. Set of CPR 1.764(s).  Any will prevent by the Set of the stable stable stable stable the mailing date of the communication.  Failure to reply within the set of calender the set of the		Office Action Summary	Examiner	Art Unit			
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extractions of lines may be available under the provisions of 37 CFR 1.13(a), in no event, however, may a reply be timely filled  Extractions of lines may be available under the provisions of 37 CFR 1.13(a), in no event, however, may a reply be timely filled  Extractions of lines may be available under the provisions of 37 CFR 1.13(a), in no event, however, may a reply be timely filled  Extraction of the provision of the above claim(s) filled on 6-21-04.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-18 Is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) Claim(s) 1-18 Is/are rejected.  7) Claim(s) is/are allowed.  6) Claim(s) 1-18 Is/are rejected to.  8) Claim(s) 1-18 Is/are rejected to.  8) Claim(s) 1-18 Is/are rejected to.  9) The specification is objected to by the Examiner.  10) The drawing(s) filled on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.12(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  3) Copies of the certified copies of the priority documents have been received in Application No.  11) All b) Some * c) Mone of:  12) Certified copies of t			Merrick Dixon	1774			
Extensions of time may be available under the provisions of 30°FR 1.13(e). In no event, however, may a reply be timely filed after 50k (5) MONTHS from the maling date of this communication.  If the period of the reply specified active is less than thin (20) days, a reply within the statutory unichrum of thisty (30) days will be enrolleded timely.  Failure to reply within the scale or obtained agree price of the provision of th	Period f		pears on the cover sheet wit	h the correspondence address			
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Art Unit: 1774

15

The abstract of the disclosure is objected to because it contains the legal word,

"comprises". Correction is required. See MPEP § 608.01(b).

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Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 1 and 10 of claim 1 is not understood. Particularly, in line one, there is a first layer claimed. In the last line of same claim, at least one further layer is claimed. Is this at least one further layer part of the footwear or the first layer? Applicants are requested to provide correction(s) or present better claim language. See claims 7, and 13 for similar problem. Again, applicants are requested to provide correction(s) or present better claim language

Claims 5,11 and 17, include bracketed phases. Applicants are requested to provide correction(s) or present better claim language.

Claims 2,8,and 14 include improper Markush groups. If applicants are attempting alternate limitations, then applicants are requested to provide correction(s) or present better claim language.

Art Unit: 1774

Claims 2-4,6,8-10,12,14-16, and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weber et al(5829171) and hjelle(5005679) are cited of interest for their respective teachings and additionally to show the state of the art.

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Applicants who wish to send a facsimile (draft copies) for the examiner's immediate review can do so by using the Examiner's personal fax number at 571-273-1520. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). NOTE: All facsimiles sent to the examiner's personal fax number should be in draft-forms and will be treated as informal.

Same facsimiles will not be entered in the related applications unless otherwise agreed and noted by the examiner.

The fax number for all other fascimile is 703-872-9306.

Information about **the status of an application** may be obtained from the Patent Information Retrieval system (**Private PAIR**).

Art Unit: 1774

Status inquires for **published applications** may be retrieved from either **Private PAIR** or **Public PAIR**. Questions about the PAIR system should be directed to the Electronic Business Center at **866-217-9197**.

Any questions concerning the instant communication should be directed to Examiner Dixon, at 571-272-1520, Mondays to Thursdays, between 12 noon and 8 PM, eastern time. The examiner's supervisor, Mrs. Rena Dye, can be reached at 571-272-3186.

Merrick Dixon

**Primary Examiner** 

Group 1700